IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.37 OF 2006

Shri Eknath Ashok Shingade ...Applicant.

V/s

State of Maharashtra
(At the instance of Nalasopara
Police Station, Dist. Thane) ...Respondent.

Mr. Prakash Naik for the applicant.

Mr. R.Y. Mirza, APP for the State.

CORAM: V.M. KANADE, J.

DATE: 31st January, 2006

P.C:

1. Heard the learned Counsel for the applicant and the learned APP for the State.

2. The applicant apprehends his arrest in connection with the offence which is registered with the Nalasopara Police Station for the offence punishable under section 376 of the Indian Penal Code. It is alleged in the complaint by the prosecutrix that the applicant had given false promises of marriage and had obtained the consent of the prosecutrix on these false promises and had a sexual intercourse with her as a result of which she became pregnant and, thereafter,

the complaint was filed.

3. The prosecution case is that the prosecutrix is 16 years old and, therefore, even if the consent was given by her, it is of no consequence as the provisions of section 376 would still be attracted since the girl was a minor.

4. It is an admitted position that the prosecution could not procure the Birth Certificate or a copy of the School Leaving Certificate. The Ousification test has been performed in which it is revealed that the prosecutrix is 17 years of age with a margin of error of two years on either side. In my view, this is a fit case for grant of an anticipatory bail. The complaint has been lodged after almost one year from the date of the alleged incident. There is no concrete proof regarding the exact age of the applicant and it cannot be said with certainty that the girl was a minor on the date of the incident. Taking into consideration these facts and circumstances, I am of the view that the applicant has made out a case for grant of an anticipatory bail. The applicant, therefore, in the event of his arrest in connection with C.R. No.I-235/2005 registered with the Nalasopara Police Station under section 376 of the

Indian Penal Code, may be released on bail in the sum of Rs 5000/- with one or two sureties in the like amount. The applicant shall report to the Nalasopara Police Station twice in a month.

5. Application is accordingly disposed of.

V.M. KANADE, J.